CHAPTER 6 -- LABOR STANDARDS

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CHAPTER 6

LABOR STANDARDS

I. OVERVIEW

This chapter provides an overview of federal and State requirements which govern the wages and working conditions for laborers and mechanics employed under construction contracts funded in whole or in part by CDBG funds.

Compliance with labor standards provisions by the CDBG recipient is a condition for receipt of CDBG assistance. Subsection III – Grantee Responsibilities in this chapter describes responsibilities of the grantee to ensure compliance with federal labor standards. These requirements include:

- Designating an individual before the beginning of construction to ensure compliance with all applicable labor standards provisions and to act as liaison with the contractor and MDOC (Step 1);
- 2. Ensuring that all bid documents, contracts and subcontracts contain applicable federal labor standards provisions and the current wage determination(s), and that all contractors are eligible for federally assisted work (Steps 2, 3, 4, and 5);
- 3. Conducting a pre-construction conference to inform all contractors and subcontractors of their labor standards and civil rights obligations (Step 6);
- 4. Conducting employee interviews and checking that labor standards posters and wage determinations are posted and accessible at the project site (Step 7);
- 5. Reviewing weekly payrolls for correctness (Step 7);
- 6. Resolving all labor standards violations promptly (Step 8); and
- 7. Maintaining detailed records to document all administrative and enforcement activities with respect to labor standards (Step 9).

II. APPLICABLE REQUIREMENTS

The following laws provide the legislative authority for the requirements related to workers' wages and hours on projects receiving federal assistance. HUD Form 4010 (included as **Exhibit 6-A** of this manual) provides a summary of the federal labor standards provisions which must be complied with. **All construction contracts entered into by CDBG recipients (or their subrecipients) which will be paid in whole or in part with CDBG funds, must contain a copy of HUD Form 4010 or its equivalent.**

A copy of HUD Handbook 1344.1, (REV. 1), <u>Federal Labor Standards Compliance in Housing and Community Development Programs</u>, is available to each public facilities grantee and additional copies are available upon request from CDBG staff. Any community that will be involved in construction activities as part of its CDBG project should review it and retain a copy for its files. This handbook provides detailed guidance for achieving compliance with the federal labor standards provisions discussed in this chapter. In addition to compliance with labor standards, grantees must comply with applicable civil rights requirements as explained in Chapter 5.

A. FEDERAL

 Contract Work Hours and Safety Standards Act (CWHSSA) (40 USC 327-330 as supplemented by U.S. Department of Labor regulations 29 CFR, Part 5). This act was enacted in 1962 and consolidated a number of "eight hour" laws, some dating back to the 1890s, which provided for overtime pay after 8 hours a day on federal construction contracts. It also provided for overtime pay after 40 hours a week.

CWHSSA requires overtime pay for laborers and mechanics at a rate of one and one-half times the basic rate of pay for hours worked on covered contracts in excess of 40 in a workweek. Effective January 1, 1986 the daily (8-hour) overtime requirement was eliminated. Therefore, the Fair Labor Standards Act (FLSA) and CWHSSA requirements are the same. In situations where there are concurrent FLSA and CWHSSA violations, the back wages should be computed and reported under CWHSSA rather than FLSA. In addition to back wages for unpaid overtime hours, CWHSSA also requires an assessment of liquidated damages at the rate of \$10 per day for each day that each laborer and mechanic worked without payment of the required overtime compensation.

The Act applies to all federally assisted contracts in excess of \$100,000 for construction contracts. Under Section 103 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

Section 107 of the Act applies to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health and safety as determined under construction, safety and health standards promulgated by the U.S. Secretary of Labor.

CWHSSA has no job site limitation. If an employee performs part of the construction work at the job site and part of the work at a shop, the statute applies to all hours of the contract work.

2. <u>Copeland "Anti-Kickback" Act</u> (18 USC 874) as supplemented in U.S. Department of Labor regulations (29 CFR 3). The Copeland "Anti-Kickback" Act and implementing regulations in 29 CFR 3 collectively provide for the following three safeguards: prohibits "kickbacks" of wages and back wages; requires contractors on DBRA covered project to submit weekly a "statement of compliance" (i.e., that the contractor has paid the required wages); and regulates payroll deductions from wages. This Act prohibits any contractor or subcontractor from inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which he or she is rightfully entitled.

29 CFR 3.5 permits the following deductions from wages without the approval of the Secretary of Labor:

- a) Deductions for social security or federal or state income tax withholding.
- b) Deductions for bona fide prepayment of wages.
- c) Deductions for court ordered payments.
- d) Deductions for contributions to fringe benefit plans, provided that the deduction is not prohibited by law, that it is either voluntarily consented to by the employee in writing in advance of the time the work is done or provided for in a collective bargaining agreement, that no profit or other benefit is obtained by the contractor, and that the deduction serves the convenience of the employee.
- e) Deductions for purchase of U.S. savings bonds when voluntarily authorized by the employee.
- f) Deductions to repay loans or to purchase shares in a credit union.
- g) Deductions voluntarily authorized for contributions to organizations such as the Red Cross, United Way, or similar charitable organizations.
- h) Deductions to pay union initiation fees and membership dues, provided that a collective bargaining agreement provides for such deductions.
- i) Deductions for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of FLSA.
- j) Deductions for the cost of safety equipment purchased by the employee, if the equipment is not required by law to be furnished by the employer and if the cost on which the deduction is based does not exceed the actual cost to the employer.

29 CFR 3 requires contractors and subcontractors on federal Davis-Bacon covered construction projects to submit each week a "statement of compliance" certifying compliance with the Davis-Bacon Related Acts requirements. This "statement of compliance" is usually referred to as the certified payroll.

3. <u>Davis-Bacon Related Acts (DBRA)</u>, as amended (40 U.S.C. 276 to A-7) and as supplemented by U.S. Department Of Labor regulations (29 CFR 5). Congress has extended Davis-Bacon prevailing wage requirements to other laws – related Acts – which provide <u>federal assistance</u> for construction through grants, loans, loan guarantees, or insurance rather than direct contracts for construction with federal agencies. Most of the related acts are listed in 29 CFR 5.1(a). They include by reference the requirements for payment of prevailing wages set in accordance with the Davis-Bacon Act.

Many of the related Acts contain coverage criteria specific to projects funded under those statutes. A determination whether the Davis-Bacon prevailing wage provisions apply to all or a portion of an assisted project requires an analysis of the actual labor standards provision in the related Act. For example, the labor standards provision of the Housing and Community Development Act of 1974 does not apply to the rehabilitation of residential property designed for fewer than 8 families. Also, certain statutes require the payment of Davis-Bacon prevailing wage rates only to those portions of a construction project assisted with federal monies while other statutes — by virtue of the language of the labor standards provision — clearly require the payment of prevailing wage rates to all construction work on a project funded "in whole or in part" by federal monies.

The Act applies to construction contracts over \$2,000 and mandates that all laborers and mechanics be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account except "permissible" salary deductions, the full amounts due at the time of payments, computed at wage rates not less than those contained in the appropriate wage determination issued by the U.S. Department of Labor.

The grantee must include a copy of the current prevailing wage determination issued by the U.S. Department of Labor in each bid solicitation. The bid document must state that the award of a contract is conditioned upon the acceptance of the wage determination. The grantee must report all suspected or reported violations to MDOC.

Comment:

CDBG-assisted contracts for the rehabilitation or new construction of <u>seven or less</u> residential units are exempt from compliance with the provisions of the Davis-Bacon Act.

In contrast, under the HUD **HOME** (Home Investments Partnership) program, contracts for the rehabilitation or new construction of <u>eleven or less</u> residential units are exempt from Davis-Bacon requirements.)

B. STATE

If Community Development Block Grant (CDBG) funds will be used to help fund a public facilities project, the <u>federal</u> (Davis-Bacon) prevailing wage requirements <u>supersede</u> those of the state.

The following laws provide the statutory authority for the state requirements related to workers' wages and hours on local government public facility projects.

1. Public Construction Contracts: Special Labor Conditions (Title 18, Chapter 2, Part 4, MCA) includes special labor requirements applicable to state or local public works projects. Section 18-2-402 provides for the Montana Commissioner of Labor to determine the prevailing wages that will apply to public works projects which are not subject to the federal prevailing wage law, the Davis-Bacon Act. The Montana prevailing wage law is often referred to as the "Little Davis-Bacon Act."

Section 18-2-403 requires that a preference for the hiring of Montana residents for construction work be included in all bid specifications and contracts for public works projects that are not subject to **federal requirements that prohibit such preferences**.

2. <u>Workers' Compensation Act</u> (Title 39, Chapter 71, Part 1) requires employers to provide workers' compensation insurance to assure wage supplements and medical benefits for workers suffering from work-related injury or disease.

NOTE: The above is a brief summary of Montana's major labor laws. Local officials and staff or project consultants should always consult the actual text of current Montana law and regulations if any questions arise.

For guidance on the application of Montana's labor laws contact:

Labor Standards Bureau
Montana Department of Labor and Industry
P.O. Box 6518
Helena, MT 59604-6518
Telephone: (406) 444-5600

III. GRANTEE RESPONSIBILITIES

CDBG recipients must take the following actions to ensure that all requirements related to labor standards are satisfied for CDBG-funded construction projects. As noted earlier, applicable civil rights requirements must also be complied with.

Step 1 - Designate a Person to Monitor and Assure Prevailing Wage Compliance (Compliance with federal Davis-Bacon wage provisions)

Compliance with the applicable Davis-Bacon prevailing wage provisions by CDBG recipients is a condition for receipt of CDBG funds. Local officials should designate a person who will be responsible for assuring prevailing wage compliance (i.e., compliance with federal Davis-Bacon wage provisions). This designation should be in the CDBG recipient's Project Management Plan, discussed in Chapter 1, <u>Project Startup</u>, and before holding the pre-construction conference.

This person will be responsible for ensuring compliance with federal labor requirements (via documented reviews of all weekly payrolls and interviews with contractors' employees) and will serve as liaison with the contractor, the project engineer, and MDOC. In most cases, this will be the project manager who has been assigned overall administrative responsibility. In some cases, the project engineer may agree to oversee prevailing wage compliance.

Step 2 - Include Labor Standards Provisions in Bid Documents

The Department of Labor regulations (at 29 CFR Part 1) establish the procedures for predetermining the wage rates required to be included in bid specifications and contracts for construction projects to which the Davis Bacon and related Acts apply. Contractors need to see the minimum wages they will be required to pay while they develop their cost estimates for work to be performed. Additionally, each bidder and the contractor selected is required to provide specific certifications assuring the CDBG recipient that they will comply with the prescribed labor standards requirements. Specific bid and contract language and certifications are provided for construction contracts in the CDBG Supplemental General Conditions and Federal Labor Standards Provisions, which appears as Exhibit 9-B in Chapter 9, Public Facilities.

It is generally the responsibility of the federal agency that funds or financially assists Davis-Bacon covered construction:

- ➤ To ensure that the proper Davis-Bacon wage determination(s) is/are applied to such construction contract(s). See 29 CFR 1.5, and 1.6(b).
- ➤ To advise contractors which schedule of prevailing wages applies to various construction items if a contract includes multiple wage schedules.

➤ To be able/ready to advise contractors regarding the duties performed by the various crafts in the wage determination, if they inquire. If two or more classifications in the applicable wage determination may perform the work in question, an area practice survey may be required. Where the classifications are from a single segment of the industry (union or non-union), data needs to be collected only from that segment of the construction industry (for the type of construction involved). Where union and non-union-based classifications are involved, the data should be obtained from both segments.

Bidders must also comply with civil rights requirements as described in Chapter 5, <u>Civil Rights</u>. The prescribed civil rights language for bid documents and contracts is also included in the *Supplemental General Conditions* of **Exhibit 9-B**, beginning on page 9-B.2. These contract provisions require that each contractor develop and document specific plans to:

- ✓ utilize local businesses (**Exhibit 5-C** contains the required Section 3 clauses);
- ✓ promote nondiscrimination;
- ✓ hire local low and moderate income persons; and
- ✓ utilize minority businesses.

CDBG recipients are also required to maintain current data on bid awards to contractors and subcontractors in their labor standards file. The *Contract Reporting Form* (Exhibit 5-J) must be completed at the time each contract and subcontract exceeding \$10,000 is awarded (including those with contractors and subcontractors that are not Disadvantaged Business Enterprises (DBEs – see Chapter 9).

Step 3 - Request The Wage Rate Determination

A request for wage determination should be submitted within the 90 days prior to the scheduled bid opening date (see Exhibit 6-B). This request may be made by letter, electronic mail, fax, or a telephone call to the MDOC CDBG staff assigned as liaison for your project. If you request the wage determination by telephone, be sure to make and retain notes indicating the date and time of your request to MDOC.

Federal wage rate determinations (federal Davis-Bacon wage rate determinations) are issued by the U.S. Department of Labor for each State by means of a general wage decision early each January and subsequent periodic modifications throughout the balance of the year, in the four basic categories within the construction industry: 1) *Heavy Construction*, 2) *Highway Construction*, 3) *Building Construction*, and 4) *Residential Construction*. These determinations are meant to be all-inclusive and representative of an area's prevailing basic wage and fringe benefits for every type of job classification of laborers and mechanics within their respective industry category. These rates will vary as to the different *zones* (see more about zones below) designated within the state, and the groups of similar jobs. To identify the correct wage determination, it is very important that the CDBG liaison be provided the following information:

- estimated contract cost;
- type of work (e.g., installation of waterlines, building construction, etc.)

- project location; and
- anticipated bid opening date.

Hourly Zone Rate Pay (Zone Rate Pay)

"Zone rate pay" is <u>an amount that is to be added to the base hourly rate when calculating pay</u>, including <u>both</u> regular pay <u>and</u> overtime pay. The Denver office of the U.S. Department of Housing and Urban Development has confirmed that these zone rate requirements apply to the Montana State CDBG Program.

<u>The published wage</u> (that is, the base hourly rate) <u>combined with the zone pay amount</u> (that is, the <u>zone hourly rate</u> that is listed in the federal wage rate determination that applies to the project) <u>becomes an employee's base rate</u> (on which both <u>regular pay</u> and <u>overtime pay</u> are based).

Zone pay is not travel pay: it is about proximity to services. Zone rate pay is not like fringe pay, since zone rate pay is properly described as a "zone hourly rate" and, as stated above, it is an amount that is to be added to the base hourly rate when calculating pay, including when calculating both regular pay and overtime pay. "Zone hourly rate" is the terminology used in the federal Davis-Bacon wage rate determination documents for Montana, which can be found at the following website:

http://origin.www.gpo.gov/davisbacon/mt.html

There are three zone rates applicable to *Heavy Construction* wages. The zone hourly rates for a project shall be determined by measuring the road miles over the shortest practical maintained route from the nearest County Court House of the following listed towns to the center of the job: Billings, Bozeman, Butte, Great Falls, Havre, Helena, Kalispell, Lewistown, Miles City, and Missoula. *Zone 1 wages* are used when the project is 0 to 30 miles from the applicable courthouse. *Zone 2 wages* must be paid when the project is located 30 to 60 miles from the courthouse, and *Zone 3 wages* for projects over 60 miles away.

Example of how to include zone hourly pay rates in calculations of pay due: If the base hourly rate for a worker (as listed in the federal Davis-Bacon wage rate determination document for the project) is \$21.09 and the zone pay is listed as \$4.70, then the appropriate employee's base hourly rate is \$25.79 an hour (\$21.09/hour + \$4.70/hour).

Under CDBG rules, that rate (\$25.79 in this example) is the rate that is to be used in calculating pay for regular hours and also for overtime hours.

Overtime pay = $1.5 \times [$21.09 \text{ base hourly pay rate} + $4.70 \text{ zone hourly pay rate}] + fringe pay.$

Overtime Pay

Overtime pay must be provided after 40 hours have been worked in a workweek.

Overtime pay = (base hourly pay rate + zone hourly pay rate) x (1.5) + fringe pay

In most cases, CDBG projects will use only the federal *Heavy Construction* prevailing wage rates. The MDOC CDBG liaison will review the wage determinations received periodically from the U.S. Department of Labor and will forward a copy of the applicable determination for inclusion in the bid document.

However, in certain cases, more than one wage determination needs to be included in the bid document by the project engineer. A guideline from the HUD Labor Relations Office, referred to as the "25% Test," can generally be followed to determine when <u>more than one</u> wage determination should be used for CDBG-funded construction contracts. For instance, this "rule-of-thumb" provides that if building construction is a "significant component" of the project (the budget for building construction exceeds 25% of the total anticipated construction contract amount), then the project engineer should include *both* Heavy Construction *and* Building Construction rates in the bid document. The same "25% Test" concept would apply to a public facility project which is principally building construction, such as a sewage treatment plant building, but which also includes more than 25% of non-building construction activity. In such cases, the project engineer should include both Building Construction and Heavy Construction prevailing wage rates in the bid document. This is a guideline, not a rigid requirement. If your project appears to fall under this "25%" test, consult your CDBG liaison for guidance.

Unclassified Workers

In the event the construction project will involve laborers or mechanics with job classifications that do not appear in the wage determination document provided, the CDBG recipient must make a request to MDOC for an appropriate classification. HUD Form 4230A, "Report of Additional Classification and Wage Rate" (**Exhibit 6-C**) should be used for this request.

Step 4 - Reverify the Wage Rate in the Solicitation for Bids

A copy of the current wage rate determinations provided by the CDBG liaison must be included in any solicitation for bids. Grantees must be sure to verify that the determination is the <u>most current available</u> from the U.S. Department of Labor. Therefore, <u>not less than fifteen work days prior to the bid opening</u>, your CDBG liaison must be contacted by telephone, electronic mail, fax, or in writing to determine whether the wage rate decisions included in the bid solicitation are still current.

In those instances where the U.S. Department of Labor has issued a modification of the earlier wage determination (posted weekly at the Davis-Bacon website's page with advance notice of rate changes, http://www.gpo.gov/davisbacon/advanced.html). MDOC may

require local officials to provide the new rate decision to all potential bidders by addendum, should a reasonable amount of time allow for this procedure. Modifications to the wage rate determination that are received by MDOC (i.e., posted at the Davis-Bacon webpage) <u>less</u> than ten days before bid opening do not have to be used.

You should note that wage determinations have the following time limitations:

- a) If the wage determination received from MDOC is not used for bid solicitation within 180 days of issuance, it is void and a new request for determination must be submitted to MDOC.
- b) If a contract is not awarded within 90 days of the bid opening, any applicable later modifications to the original wage determination must be included in the contract.
- c) If construction has not commenced within 90 days of the signing of the contract, any applicable later modifications to the original wage determination must be included in the contract.

According to the HUD Labor Relations Office, the modifications under items **b** and **c** above can be incorporated by a Change Order, and do not require re-bidding.

Grantees should also check with their legal advisors and consultant engineers, since there may be more restrictive or different time frames, such as 60 days under State law, for such contract changes in the actual bid document. If this situation arises, please contact your CDBG liaison for guidance.

Step 5 - Verify Bidder Eligibility

The U.S. General Services Administration maintains lists of contractors that have been found in serious violation of federal labor standards or other requirements, and therefore have been debarred, suspended, or otherwise declared ineligible for participation in federally assisted construction projects.

CDBG grantees are required to obtain MDOC clearance on all proposed prime contractors and consultants <u>prior to</u> awarding any CDBG funded contracts. As soon as possible following the bid opening, and before awarding any construction or consultant contract, notification must be given to MDOC of (1) the name of the firm selected for contract negotiation on the pending contract and (2) its principal owner(s). See sample letter, **Exhibit 6-D**.

A copy of the letter requesting a debarment check can also be sent by facsimile machine (fax) to expedite the request. The request can also be made by telephone to the MDOC CDBG staff assigned as liaison for your project. The CDBG liaison will then check the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs" (at http://epls.arnet.gov/) to determine if that contractor's name, any principal's name, or the name of his/her firm appears.

MDOC will provide the grantee with a notice stating whether the prospective contractor is eligible or ineligible to be retained for the project. If the contractor is determined to be ineligible, the contract may be offered to the first alternate bidder or the bidding procedures may be reopened. A copy of any correspondence sent or received from MDOC or notes taken for telephone contacts with MDOC should be retained to document this step.

Step 6 - Inform Contractor(s) of Federal Requirements By Conducting a Pre-construction Conference

Following the contract award for construction projects involving CDBG funds, **the CDBG** recipient should hold a pre-construction conference. The CDBG recipient and prime contractor should **include all subcontractors** in the discussions to ensure that they are aware that they must also comply with the federal labor standards and equal employment opportunity provisions. The project architect and/or engineer (if applicable) will attend the conference to cover the technical or other contract related issues for the CDBG recipient. The CDBG recipient's project manager will cover the federal or state compliance issues.

The pre-construction conference represents a key opportunity prior to the beginning of project construction for giving instructions to the contractor. A well-planned and executed conference can help prevent problems and misunderstandings that could delay the project. To assist CDBG recipients in preparing for and conducting the required pre-construction conferences for CDBG funded construction contracts, a Pre-construction Conference Planning Guide (Exhibit 6-E) has been provided. This contains guidance for conference preparation, a general format to be used as an agenda, supplemental information on labor standards and civil rights requirements, and a blank conference checklist and agenda which should be followed to record minutes for the conference.

At a minimum, the pre-construction conference should include discussions of:

- prevailing wage requirements, including posting prevailing wages continually at the job site;
- employment of apprentices or trainees;
- weekly pay for employees;
- submission of weekly payrolls;
- penalties if prevailing wage requirements and labor standards requirements are not complied with;
- payment of overtime;
- equal employment opportunity requirements;
- employment of minorities and local workers;
- use of DBEs and local businesses;
- notices that must be posted at the job site;
- the use of bona fide, registered subcontractors; and
- □ key responsibilities of the contractor, engineer/architect, and project manager.

In order to document discussions that occur during the pre-construction conference, the CDBG recipient is required to prepare minutes of the conference. A verbatim record is not necessary -- the names of the persons who attend and a summary of the comments and issues covered is sufficient. A copy of the minutes should be maintained on file by the Project Manager as well as forwarded to the MDOC CDBG liaison.

Copies of pages 6-E.2 through 6-E.8 should be provided to each contractor representative who attends the pre-construction conference. This helps to document that the key requirements have been covered. The form also provides a space for the participants to sign their names to acknowledge that compliance issues were discussed.

Notices that must be posted at the construction site include:

- ✓ Notice to Employees Working on Federal or Federally Financed Construction Projects, Form WH-1321 (Exhibit 6-F);
- ✓ a copy of the wage rate decision;
- ✓ Equal Employment Opportunity poster (Exhibit 6-G); and
- ✓ Job Safety and Health Protection poster (Exhibit 6-H);

Contractor reporting requirements include:

- ✓ Weekly Payroll Reports, which must be submitted weekly by both the prime contractor and subcontractor(s); and
- ✓ Notice of Approved Apprenticeship or Trainee Program, which must also be submitted -- if applicable.

Contractors are urged to use the U.S. Department of Labor (DOL), Payroll Form WH-347. (See sample Form WH-347, **Exhibit 6-I**.) Contractors may also use and furnish computerized weekly payrolls in lieu of the standard Payroll Form WH-347, if the basic information contained on the WH-347 is provided and the contractor includes a signed certification for each payroll by using the "Statement of Compliance" Form WH-348 (see sample Form WH-348, **Exhibit 6-I**). The text of the "weekly statement with respect to the payment of wages," which is required by regulations of the U.S. Secretary of Labor, appears on the reverse side of the Exhibit 6-I form.

Contractors can use a numerical code system for reporting job classifications on their payroll form, if the contractor submits a copy of the numerical code system with the initial payroll report and the codes appear to accurately reflect the actual duties of workers observed at the job site.

Exhibit 6-I (Weekly Payroll Report Forms, WH-347 and WH-348) contains not samples of these forms but also examples and instructions for the contractor to follow for completing and filing all the required weekly payrolls on the project. For example, the CDBG recipient should be aware that weekly payroll reports are also required from subcontractors identified as "working owners." (See paragraph #7, page 6-I.5 of Exhibit 6-I.) A "sole-proprietor", who

performs work on the project, must still submit weekly payrolls showing himself or herself as "owner", the work classification and the daily and total hours worked. To provide additional detailed guidance to contractors for the proper completion and use of the above weekly payroll reports, see "Contractor Payroll Information" (**Exhibit 6-J)**. These forms may be ordered from the Superintendent of Documents, Government Printing Office, Washington, D.C. 80402.

Step 7 - Monitor Contractor Performance

It is the Project Manager's responsibility to monitor construction activities to ensure (a) that all required notices are posted prominently at the construction site, (b) that the contractor's weekly payroll reports are accurate and submitted weekly as required, and (c) that the contractor is complying with applicable labor standards. This monitoring function can be accomplished through the following activities:

- on-site inspections to ensure that required notices and copies of the applicable wage rates are posted at reasonably accessible locations for the workers to review;
- <u>interviews with construction employees</u> to confirm job classifications and pay rates. Interviews should be conducted at least once a month with a representative of each classification of laborers involved in the construction and at least 10 percent of the workforce. The form to be used for construction employee interviews, instructions for conducting the interviews, a completed sample interview form, and instructions for finding the appropriate wage rate based on the sample interview are provided as **Exhibit 6-K**);
- comparison of weekly payroll reports to the prevailing wage rate decision. Payroll
 reports must be submitted by the contractor within seven days following completion of the
 workweek and should be promptly reviewed by the Project Manager.

Review of weekly payroll reports:

Additional guidance to CDBG recipients on the payroll review and employee interview processes is provided in Exhibit 6-K of this chapter.

The CDBG recipient's Project Manager should initial and date each payroll to document that the payroll review has been completed. CDBG staff will review documentation that each weekly payroll has been reviewed. You must maintain adequate records such as these for MDOC review to demonstrate that all labor standards provisions have been complied with and workers' rights are protected.

A form is provided (**Exhibit 6-P**) for the Project Manager/Labor Compliance Officer to use to verify payroll review, to authorize payment to the contractor, and to certify that the contractor has complied with labor and civil rights requirements as outlined in the CDBG Project Administration Manual and agreed upon by contract. During periods of construction, drawdown requests to CDBG must be accompanied by Exhibit 6-K and 6-P. (See Chapter 4, pages 4-5 and following.)

For posting the required notices at the job site, the contractor may use a bulletin board affixed to the inside or outside of a temporary field office or storage trailer, or if none of these are utilized, on a plywood billboard located near the site of construction activities. The current wage rates would typically be put under a weatherproof plastic covering and posted with the required notices. Regardless of the method used, it is the contractor's responsibility to provide adequate information to his employees regarding payroll and labor protections.

Use of Volunteers

The Housing and Community Development Act exempts volunteers from Davis-Bacon Act requirements on Community Development Block Grant (CDBG) Program funded projects.

Davis-Bacon wage rates "shall not apply to any individual that:

- performs services for which the individual volunteered;
- does not receive compensation for such services; or is paid expenses, reasonable benefits, or a nominal fee for such services; and
- is not otherwise employed at any time in the construction work."

The Project Manager should use and obtain a signed volunteer certification form (**Exhibit 6-M**) from each volunteer worker, other than the contractor's employees, performing work on CDBG-funded project activities.

Step 8 - Investigate Labor Standards Violations

Violations of labor standards requirements may surface as the result of either monitoring or through a specific complaint by a construction worker. In either instance, **the CDBG recipient is responsible for thoroughly investigating and documenting the alleged violation.** If a violation is confirmed, the Project Manager should first work with the contractor on an informal basis to resolve the problem and allow a reasonable time for correction.

Where the contractor refuses to address the violation or continues to violate labor standards provisions, the CDBG program specialist should be promptly notified in writing of the violation. The contractor should be informed that an unresolved finding of labor standards violation could result in disbarment and make the contractor ineligible for participation in CDBG-assisted construction projects in the future.

Step 9 - Maintain Labor Standards Files

You must maintain adequate records for MDOC/CDB G review to demonstrate that all labor standards provisions have been complied with and workers' rights are protected. For each construction contract, a Labor Standards file should be maintained which includes the following items:

- copies of all applicable Wage Rate Decisions;
- evidence that labor standards provisions are included in bid packages and contracts;
- □ the MDOC/CDBG notice of contractor eligibility (not on the debarred parties list);
- a copy of the pre-construction conference minutes;
- □ the Contract Reporting Form (**Exhibit 5-J**);
- evidence that all required notices have been posted at the construction site (such as photographs taken on site);
- the contractor's weekly payroll reports (numbered sequentially and the final one marked "Final");
- evidence (signature/initials, review dates, notes) that show that all weekly payroll reports have been reviewed and verified as correct (also see Exhibit 6-P);
- records of construction worker interviews conducted (using **Exhibit 6-K**);
- evidence of any violations with supporting documentation;
- evidence of the resolution of any violations;
- copies of lien releases; and
- completed volunteer certification forms, if applicable.

CHAPTER 6

EXHIBITS

6-A	Federal Labor Standards Provisions: HUD-4010
6-B	Request for Wage Determination
6-C	Report of Additional Classification and Wage Rate: HUD-4230A
6-D	Request for Verification of Bidder Eligibility
6-E	Pre-construction Conference Planning Guide
6-F	Federal Wage Poster: WH-1321
6-G	Equal Employment Opportunity Poster
6-H	Job Safety and Health Protection Poster
6-I	Weekly Payroll Report Forms: WH-347 (Payroll) and WH-348 (Statement of Compliance), with Instructions for Completing Payroll Form WH-347
6-J	Contractor Payroll Information
6-K	Employee Interview Form
6-L	Labor Standards Definitions
6-M	Volunteer Certification Form
6-N	Contractor's Receipt of Required Program Materials
6-O	Contractor's Guide to Davis-Bacon Requirements and Certified Payroll Reports
6-P	Certification of Labor and Civil Rights Compliance and Authorization for Payment